

1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

2 -----x
3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 -against-

6 MICHAEL YOUNG,

7 Defendant.
8 -----x

16-CR-617 (BMC)

United States Courthouse
Brooklyn, New York

December 7, 2017
10:00 a.m.

9 TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
10 BEFORE THE HONORABLE BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE

11 APPEARANCES

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GEORGETTE K. BETTS, RPR, CSR
Official Court Reporter

1 THE COURTROOM DEPUTY: Criminal cause for
2 sentencing, United States versus Michael Young, docket number
3 16-CR-617.

4 Counsel, state your appearances starting with the
5 government.

6 MR. SPEKTOR: Good morning, Your Honor, Andrey
7 Spektor and Lindsay Gerdes for the United States.

8 THE COURT: Good morning.

9 THE PROBATION OFFICER: Good morning, Kristen
10 McKeown, Probation.

11 THE COURT: Good morning.

12 MR. DINNERSTEIN: Hi, good morning, Mitchell
13 Dinnerstein, D-I-N-N-E-R-S-T-E-I-N for Mr. Young, who is
14 before the Court.

15 THE COURT: Good morning. Good morning, Mr. Young.

16 THE DEFENDANT: Good morning.

17 THE COURT: We're on for sentencing. Let me first
18 determine if I'm going to accept the guilty plea that
19 Mr. Young gave to Magistrate Judge Orenstein.

20 I have reviewed the transcript of that plea.
21 Mr. Young, is it still your desire to plead guilty?

22 THE DEFENDANT: Yes, yes.

23 THE COURT: Is everything that you told the
24 magistrate judge on that date true?

25 THE DEFENDANT: Yes.

1 THE COURT: Mr. Dinnerstein, do you know of any
2 reason why I should not accept the guilty plea?

3 MR. DINNERSTEIN: None, Your Honor.

4 THE COURT: Having heard counsel and the defendant's
5 answers to my questions and having reviewed the transcript of
6 the plea, I find the defendant is pleading guilty knowingly
7 and voluntarily and understands his rights and the
8 consequences of his plea and that there is a factual basis for
9 the plea. I, therefore, accept the plea of guilty.

10 Let me go through with you, Mr. Young, the documents
11 I have reviewed in preparing for the sentencing. I believe
12 you have seen all of these but if you haven't let me know and
13 we'll take a break so you can go over them with your attorney,
14 okay?

15 THE DEFENDANT: Yes.

16 THE COURT: I will start with the Presentence
17 Investigation Report that's from September 18th of this year.
18 There was one addendum to that report that is curiously
19 undated but came in fairly recently. In addition to that, I
20 have a sentencing memorandum from Mr. Dinnerstein with
21 exhibits annexed to it, that is also undated but received in
22 my chambers on November 27th. I have a follow-up letter from
23 Mr. Dinnerstein of November 29th clarifying some things about
24 the plea agreement and the guideline range and then I have a
25 sentencing memorandum from the government that's dated

1 November 30th.

2 Anything else I need to be looking at? I have
3 Mr. Young's letter, of course it's exhibited to the sentencing
4 memorandum.

5 MR. DINNERSTEIN: Your Honor, I would just say that
6 the original sentencing memorandum is dated for me
7 November 21st. That's on the second page.

8 THE COURT: You are correct, my apologies.

9 MR. DINNERSTEIN: That's okay.

10 THE COURT: Mr. Young, you're familiar with all
11 those documents?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Let's talk next about the facts that are
14 going to control this sentencing. Based on the parties'
15 submissions, I don't think there's any dispute about the
16 description of the offense and the offender characteristics in
17 the PSR; is that correct?

18 MR. SPEKTOR: That's correct, Your Honor.

19 MR. DINNERSTEIN: That's right, Judge.

20 THE COURT: I will adopt those portions of Section A
21 and C that describe the offense and the offender
22 characteristics as my findings of fact for purposes of the
23 sentencing.

24 Let's next talk about the guidelines, which are of
25 course merely advisory and only one factor that I am to

1 consider in determining the appropriate sentence. I must say
2 I'm a little bit confused as to the parties' positions on the
3 guidelines. Let me summarize what I understand and then you
4 all tell me if I'm wrong.

5 I think there is agreement that we're talking about
6 an offense level of 28 and a Criminal History Category of VI,
7 which would make Mr. Young a career offender and that would
8 give a guideline range of 140 to 175. I think technically the
9 parties agree that's the way the guidelines work out. But as
10 I understand it, they have also jointly said to me that's too
11 high, you should not consider that to be the guidelines. You
12 should be looking more in the 77 to 96 month range as a
13 guideline range for an appropriate sentence here.

14 Have I said it correctly?

15 MR. SPEKTOR: I think that's essentially right,
16 Judge. The one, I guess, technical correction is because he's
17 a career offender he started at base offense level 32 and then
18 we get to 28. And, again, because he's a career offender
19 Criminal History VI applies, but again we all agree that both
20 the criminal history and the base offense level are overstated
21 and we're jointly asking for a 76 to 96 month range to apply.

22 THE COURT: That's fine. But there is a document I
23 have to fill out when I do the judgment that you all don't see
24 called the Statement of Reasons and the statement has to have
25 the calculation of the guideline range. I have no problem

1 with the parties' agreement to 77 to 96 as the starting point
2 for me to determine the sentence, that's fine, but
3 technically, as a technical matter, I do think we're talking
4 about an adjusted offense level of 28, right?

5 MR. SPEKTOR: That's right.

6 THE COURT: And then the criminal history and career
7 offender kicks it up to Category VI, which means 140 to 175
8 months. So that's what I put on the form because that is
9 technically correct, that's my finding as to the guidelines.
10 I accept the parties' mutually expressed view that that's much
11 too high and I shouldn't be considering that range. It seems
12 much too high to me too and that the appropriate range for me
13 to be considering is 77 to 96, which leaves only one
14 ambiguity, which is under your plea agreement, what I'm
15 picking up from Mr. Dinnerstein is he's looking for a downward
16 variance. Is that the case and, if it is the case, is it
17 allowed under the plea agreement?

18 MR. SPEKTOR: It's not allowed under the plea
19 agreement. I think the plea agreement says that we're jointly
20 asking for a range between 76 and 96 months.

21 The way I read Mr. Dinnerstein's letter is that it
22 said -- and obviously the Court is not bound by our agreement
23 which is sort of a wink and a nod to the Court, obviously he's
24 not allowed to advocate for anything lower and we don't think
25 anything lower is appropriate.

1 THE COURT: Okay. Is that a clear statement,
2 Mr. Dinnerstein?

3 MR. DINNERSTEIN: Your Honor, I kind of get to where
4 we are slightly differently. Because both of us agreed, as
5 the Probation Department did, I believe it's 4B1.3(3) applies.
6 So instead of him being under those circumstances where 4B1.3
7 applies, instead of him being a career offender or Criminal
8 History Category VI, he should be construed going in as a
9 Category V, because that's what we agreed to, that was part of
10 the agreement.

11 Now I agree with you that it is technical because I
12 think we still get to the same 77 to 96 months that way, but
13 we start there and, therefore, this Court of course can take
14 into consideration 3553(a) factors starting there instead of
15 starting at 140 to 175. So that's why I made a point of this.

16 Also, it's my understanding that an individual in
17 Category V can get a two-level reduction for a minor role in
18 the offense, which we also both agreed to, that he should have
19 gotten the minor role in the offense. The government's
20 position is if he's in Category VI he can't get a two-level
21 reduction for a minor role.

22 THE COURT: But I think we're kind of in angels
23 dancing on the head of a pin land. If the technically correct
24 guidelines are 140 to 175 months, I'm not going to mess with
25 them in terms of what departures might be appropriate under

1 the guidelines. There is no reason for me to do that.

2 MR. DINNERSTEIN: Well --

3 THE COURT: I'm going to vary. I don't know if
4 there's any amount of downward departure that would
5 legitimately get me to 77 to 96, but there is legitimately a
6 variance that I could use to do that. So that's the way I'm
7 approaching it. I think that's the only thing that makes
8 sense. Because like you said in your letter, well, if I start
9 thinking did the criminal history get overstated, I can only
10 take him down one level to Category V and I don't see anything
11 to mess around with that when we're all agreed that the 140 to
12 175 is much too high and the appropriate range for me to use
13 as a starting point is 77 to 96.

14 MR. DINNERSTEIN: I agree with you. I guess part of
15 that is I'm -- I see two issues here that I just wanted to
16 address with the Court, which I did in the papers.

17 One deals with the idea that the youthful offender
18 adjudication counts for career offender purposes. This case
19 the guy got a four-month sentencing and then because he had a
20 violation of probation that ran concurrently with another
21 case, it put it at 14 months and therefore counts. Which I
22 think is just -- I'm just in a way bitching, Your Honor.

23 THE COURT: I understand. I got that. But I think
24 you're barking up the wrong tree. Those would be good
25 arguments if you were trying to persuade me why 140 to 175

1 months is too high.

2 MR. DINNERSTEIN: You're right.

3 THE COURT: You should weigh the guidelines lightly,
4 Judge, because look at these mitigating factors that
5 contributed to them, but we know they're too high.

6 MR. DINNERSTEIN: The other thing was I wanted to
7 give you a pat on the back for your U.S.A. versus Terrence
8 Williams decision, which was a pre-*Beckels* decision which
9 frankly, in my opinion, makes a heck of a lot more sense than
10 what the Supreme Court did, so I just wanted to mention that.

11 THE COURT: I appreciate that.

12 In any event, I still have an open question for you
13 which is, as I understand the plea agreement, you are not
14 allowed to argue that 77 to 96 is too high and I ought to go
15 below that. You can of course remind me of the fact that
16 where I sentence him is entirely up to me.

17 I understand that to be your position, am I right?

18 MR. DINNERSTEIN: Absolutely, Judge.

19 THE COURT: So the government does not consider
20 anything that Mr. Dinnerstein has said as constituting a
21 breach of the plea agreement, right?

22 MR. SPEKTOR: That's right, Your Honor.

23 THE COURT: So that's my finding on the guideline
24 and, secondarily, that's how I am generally approaching this
25 case is the 77 to 96 right, or do I on my own feel the 3553(a)

1 factors which suggest something lower. Okay, good.

2 Let me then hear from all the parties on those
3 3553(a) factors, I'll start with you, Mr. Dinnerstein.

4 MR. DINNERSTEIN: Michael Young is now 33-years old,
5 his criminal history category, which we just discussed, was
6 driven by misconduct that occurred more than 10 years ago,
7 some more than 15 years ago when he was a teenager. He's not
8 that person now, but --

9 THE COURT: This is a worse crime now, isn't it?
10 Isn't this a worse crime than when he was a teenager?

11 MR. DINNERSTEIN: Is it what?

12 THE COURT: Is it worse, is it more egregious?

13 MR. DINNERSTEIN: Well, I think maturity makes a
14 difference and that's what I'm talking about. The fact that
15 those crimes were committed when he was a teenager --

16 THE COURT: But I'm asking you a different question.

17 MR. DINNERSTEIN: -- he may have outgrown. It's not
18 only about youth --

19 THE COURT: I'm asking you, has he not graduated to
20 a higher level of criminal activity by this conviction?

21 MR. DINNERSTEIN: I understand what you're saying,
22 Your Honor, and I think that's not the case. I think what
23 this is is a person who has a drug problem, had a drug
24 problem. Who is a small-time drug dealer in the community
25 that he lives in. There's nothing to defend that, but that's

1 what this case is about.

2 The government has acknowledged that he was a minor
3 role player in this and that is also of course of
4 significance.

5 Now just I believe this week Your Honor sentenced
6 Mr. Carrillo to 126 months and that there was a forfeiture
7 order that was for \$150,000 plus numerous guns that were
8 apparently recovered in his apartment, I don't know exactly
9 where they were recovered.

10 THE COURT: If you're making the point that
11 Mr. Young compares favorably with Mr. Carrillo, I agree with
12 you.

13 MR. DINNERSTEIN: Right. Michael's forfeiture order
14 is \$1440, which is less than 100th of that.

15 There is also clearly no accusation that he ever
16 acted violently, I think that's also a positive factor in
17 terms of response to your question whether he's graduating
18 upwards.

19 I want to talk a little bit about what the
20 government said in its memo that acknowledges the Queensbridge
21 as the largest public housing complex in the country. In
22 fact, it has 29 buildings, it has 96 units per building, has
23 over 7,000 people, and in 1939 when it was built there was a
24 policy that poor people and only poor people should live
25 there. Also, it happened that more than 98 percent of the

1 people were either black or Latino who lived there. That's
2 hardly a good thing.

3 Today, in a more enlightened world dealing with
4 housing policy, these huge housing projects first aren't built
5 and certainly the idea of segregating poor people has been
6 determined to be a bad idea. It is a much better idea since
7 the housing policy today that rich people, poor people, middle
8 class people all live together, it creates a sense of
9 community and that's really a good thing.

10 Where Queensbridge is and -- now it's actually
11 better but in the '90s and in the 2000s when Michael was
12 growing up, it was a very dangerous place. And, hopefully,
13 today housing projects in these sorts of places are run
14 better. In fact, we know, based on crime statistics, that
15 crime is down and that we hope that the residents who live
16 here, who live in those places have hope that they can
17 actually get beyond it. So we hope and I hope that
18 Queensbridge is anachronism of the past and it was a bad and
19 ineffective housing policy.

20 Now Michael grew up in that project and as a
21 teenager he lived a street life. He got involved in drugs.
22 His father, who is not around, when he was around was abusive
23 towards him. In school he did not -- was not a good student.
24 He was in Special Ed. classes. He was immature and he was
25 involved with what occurred on the streets in the '90s and the

1 2000s. That's in fact the reason why what drives this case is
2 his criminal activity back 10, 15 years ago. Maybe he saw,
3 and it wouldn't be surprising, that there was little hope for
4 him of having a really good life. He wound up committing
5 those crimes and he wound up going to jail back then.

6 Now I looked up a little bit about Queensbridge and
7 back then all the people who have, quote, made it in
8 Queensbridge, they're not educators, they're not people who
9 did well in school. There's two types of people who made it,
10 apparently. People who are rappers, who are involved in the
11 music industry and people who play basketball. There are
12 several basketball players who are now in the NBA who grew up
13 in Queensbridge. That takes a particular talent that Michael
14 did not have, and I think that's a factor.

15 But I also think he's now 33, he's not 20 and he's
16 grown up and it's not the person that he is today who in a
17 sense is going to be sentenced because of these guidelines and
18 because of his Criminal History Category.

19 His mom is here in Court, she's the woman in pink
20 over there.

21 THE COURT: Thank you for coming.

22 MR. DINNERSTEIN: She needed an Access-A-Ride to get
23 here, she walks with a walker. She lives in Queensbridge,
24 she's lived there for her whole life. She has a real
25 relationship with Michael. If you read her letter, this is

1 Exhibit 1, she talks about that he's a good kid, that he's
2 been good to her and that she actually writes a second letter
3 saying that she hopes when you sentence him, you sentence him
4 to a place relatively close so she can get an Access-A-Ride or
5 however she would travel and she would go visit him. It's my
6 understanding that's how she visits him at the MDC where he's
7 presently being housed.

8 She needs him, she loves him. He needs her, he
9 loves her. That's how people get beyond criminal activity, I
10 think, by having relationships that matter.

11 His girlfriend is the woman in the middle over
12 there, she's Crystal. He has children not with her, but he
13 cares for her children. She writes that in her letter, which
14 I believe is Exhibit 3. I'm sure you read it.

15 THE COURT: Yes.

16 MR. DINNERSTEIN: And Michael cares for those
17 children and helps her take care of them when he was out on
18 the street. He also has two other children and there is
19 another letter there, it's not a letter that shows necessarily
20 much affection towards him, but it's a recognition that they
21 messed up in the past, her and Michael, and that she wants to
22 get beyond that. She doesn't want it to be held against him
23 when he's punished today, and that he's also a good father to
24 their child. That's the criminal complaint case that was from
25 2013.

1 THE COURT: Yes.

2 MR. DINNERSTEIN: And Michael also writes to the
3 Court. He knows he must get a handle on his drug problems and
4 he hopes, frankly, when he goes -- and I'm not asking for time
5 served, when he goes to prison that he gets into a drug
6 program, that the Court acknowledges a need for that, and that
7 he also understands he needs to obtain a skill and gets some
8 better education. Whatever his educational limitations are,
9 he's still understands he needs to get educated.

10 Now I think as a teenager Michael was directionless,
11 but he says in his letter, and I think it's quite insightful,
12 that he has no illusions that this will not be easy. He
13 simply now asks for a reasonable chance and reasonable time to
14 contribute to his community, which he mentions, and to support
15 his children.

16 So you have the difficult job that's I guess why
17 they give you the robes, but what's an appropriate sentence
18 using all the 3553(a) factors, that's for you to decide.

19 Carmichael, who also was a person who was described
20 had a minor role in this offense received a 51-month sentence.
21 That's maybe appropriate. Michael, I think, and I don't know
22 about Carmichael, but I know that Michael now recognizes that
23 he has responsibilities for his children, for Crystal's
24 children and for his mother and he hopes that he'll have a
25 chance to get out there and act responsibly and show the Court

1 that he really does want to be a decent member of our
2 community.

3 In a sense -- and I find this all troubling and,
4 frankly, I find it troubling because of how the U.S.
5 Sentencing Guidelines work, that incidents that happened long
6 ago when a person was different still is affected in the same
7 way as something that happened this week or this month or this
8 year. That to me doesn't make sense from a sentencing
9 perspective. And the person today, this 33-year old man is
10 not that 16-year old kid or 18-year old kid who did those
11 criminal acts 15 years ago. So I ask you to take that into
12 consideration.

13 Your Honor, the government did provide a B1C plea so
14 there is no mandatory minimum in this case and it's your job
15 totally, you have absolute discretion to do justice. I ask
16 you to do that wisely. Thank you.

17 THE COURT: Thank you, Mr. Dinnerstein.

18 Mr. Young, I've read your letter but if you'd like
19 to say anything or amplify on the letter or anything else you
20 want to say I'm happy to hear it.

21 THE DEFENDANT: No, sir.

22 THE COURT: Thank you.

23 I'll hear from the government.

24 MR. SPEKTOR: Your Honor, just very briefly.

25 Mr. Dinnerstein talked about how Queensbridge is improving,

1 and I hope that's true, but the defendant's conduct doesn't
2 help matters in Queensbridge selling drugs. And I do
3 recognize that, you know, if he was not a career offender he
4 would get the benefit of the minor role adjustment. There are
5 four defendants in this case who are similarly situated in
6 that regard. They are basically street sellers and I think
7 that's what Mr. Young is.

8 He certainly compares favorably in terms of conduct
9 to Mr. Carrillo. He is similar to Mr. Carmichael. I know
10 that the Second Circuit has cautioned District Courts not to
11 calibrate sentences to co-defendants, but to the extent it's
12 helpful to the Court, you know, Mr. Young sold a lot more to a
13 confidential source. He sold 32 grams just to an undercover
14 buys which alone would get him over the 28-gram threshold that
15 we use to charge individuals over the five-year mandatory
16 minimum. We did give me a zero to 20, I think that's in
17 recognition to his minor role. He's not living the life that
18 Mr. Carrillo was certainly. But when you're comparing him to
19 other co-defendants who are like him, street sellers, he
20 doesn't compare favorably not just in terms of volume but in
21 terms of his record. I think only Mr. Williams has arguably a
22 worse record.

23 What troubles us about Mr. Young is that he has a
24 mix of violent criminal history, even though he's a bit older,
25 he has more recent drug convictions. He's gotten lenient

1 sentences for some of those convictions. He's gotten
2 treatment, he's completed treatment and yet it hasn't really
3 deterred him in any way. So I think for those reasons a
4 sentence within the range of 77 to 96 months is appropriate.

5 THE COURT: I've considered all the factors under
6 3553(a) including the advisory guidelines as we have all
7 agreed they should be viewed in this case, so I'm not really
8 even looking at the technically correct guidelines. What I am
9 wrestling with is the 77 to 96 range the least amount of time
10 necessary to accomplish the purposes of 3553(a). It's a
11 mitigating factor to me in looking at Mr. Young's history and
12 characteristics that he just never had much going for him and
13 I think in the environment he was growing up in there just
14 weren't many ways for him to go.

15 I agree with Mr. Dinnerstein, I don't know whose
16 idea it was to lock people in these mega projects and not
17 realize what could result from that, but opportunity is not
18 something that Mr. Young had. I also tend to agree with
19 Mr. Dinnerstein that the worst of the criminal acts occurred
20 when he was younger and presumably more reckless. But also
21 the point I was trying to make in terms of evaluating the
22 seriousness of the crime and the circumstances of the offense,
23 is that participating as a street dealer in a case like this
24 is, in fact, very serious and in some ways more serious than
25 any of the things he did as a teenager.

1 I really appreciate the family support that he has
2 and when I take that into account I have to think about what
3 happens to all the families who he sells to, the family
4 members who are addicted to these drugs, what happens to their
5 families. And I think in terms of general deterrence, it's
6 very important to send a message that you can't support
7 yourself or your own children by selling poison to other
8 people and their children.

9 In terms of specific deterrents, I think there is a
10 need because, as I said, Mr. Young just hasn't had a lot going
11 on for him. I don't know, as I sit here, where he's going to
12 go when he gets out. But I think there's a real risk, based
13 on his history and based on the magnitude of this crime, that
14 he again searches for what to him may be the easiest way if
15 not the only way.

16 Certainly even the middle or the high end of the
17 adjusted guideline range that we discussed is not necessary
18 here. What I'm struggling with is whether the 77 or something
19 less than 77 might do it. What gives me pause on that
20 question is that while he was much younger, I don't really
21 understand how this happened, maybe you can explain it,
22 Mr. Dinnerstein, in paragraph 40 of the PSR when he was
23 convicted for second degree assault during a felony he was
24 sentenced to three years but he didn't get released to parole
25 until 2009, so it looks like he did like five years.

1 How does that happen?

2 MR. DINNERSTEIN: My understanding, after speaking
3 with him, is that he was released in 2007.

4 THE COURT: I see.

5 MR. DINNERSTEIN: And not 2009. That's what he
6 says.

7 THE COURT: Okay. Does probation think maybe that's
8 an error?

9 THE PROBATION OFFICER: Let me look through my
10 records, Your Honor.

11 THE COURT: It doesn't look right that he's arrested
12 in 2004, he's sentenced in 2005, then he's paroled in 2009 on
13 a three-year sentence. Something doesn't fit there. The
14 reason I'm looking at this because it doesn't look like he's
15 ever served more than three years, probably less than that.

16 MR. DINNERSTEIN: My understanding, Your Honor, if I
17 can try to explain this to you, is that he was released
18 originally in 2007. He was violated in 2009, apparently
19 for -- there was something going on in the housing projects at
20 that time that he's not supposed to return back to the housing
21 projects to live and he was -- he didn't have an address at
22 some point, so he was incarcerated again because he couldn't
23 provide the parole department with an address. And that
24 occurred a second time for basically the same thing. His
25 violations had to do with not being able to provide them with

1 an adequate address.

2 THE COURT: Right, he's got three violations from
3 that conviction but when they put him back they didn't have
4 him serve any more than a couple of months, two or three
5 months.

6 MR. DINNERSTEIN: That's right. Then they toss him
7 back out on the street and he's got to find a place to live.

8 THE PROBATION OFFICER: Your Honor, I'm sorry, that
9 is a typo. The date of release to parole should be June 4th,
10 2007.

11 THE COURT: Now it makes sense. It's good that we
12 clarified that because it's one thing for me to look at
13 somebody who served five years in jail and determine how much
14 it takes to specifically deter him, and somebody who served a
15 couple of years here, a couple of months there, it's very
16 different going away for as long as Mr. Young is going to this
17 time.

18 Well, in light of that and all the other
19 considerations that I've articulated, I don't think it's
20 necessary to be within the 77 to 96 month range. I think a
21 sentence, given the nature of his history of 63 months is
22 sufficient to accomplish all of the purposes of sentencing and
23 that therefore will be my sentence. Sixty-three months
24 custody. I will of course recommend that he be assigned to a
25 facility as close to New York as possible. I will also impose

1 three years of supervised release, which will require him to
2 comply with the order of forfeiture, which I think I signed.

3 MR. SPEKTOR: Yes, Your Honor.

4 THE COURT: He is not permitted to associate -- and
5 this is a tough one, Mr. Young, you have to be very careful
6 about this. You're not permitted to associate whether in
7 person, mail, email, texting with anybody who is in any
8 organized crime groups. I didn't hold this against him
9 because it was only mentioned once in one of the convictions
10 that at some point they identified him with a street gang.
11 You're not allowed to have any contact with anybody in that
12 gang. Probation is going to give you a list of people you
13 can't have contact with and you've got to stick to that or
14 it's a violation and a violation here is different than the
15 violations you may have experienced from your state court
16 convictions, it can mean years in jail not a couple of months.

17 Now, in addition, I want him to participate in
18 out-patient drug treatment as prescribed by probation. He's
19 got to pay for that to the extent he can. If he can't, which
20 I expect he can't then he doesn't have to. He's got to stay
21 completely beyond sober. He's not allowed to have any alcohol
22 or any other illegal drug or intoxicant unless it's pursuant
23 to a doctor's prescription. And he's going to be randomly
24 tested. They're going to show up at your house and they're
25 say give us a urine sample. Again, if you fail it could be

1 years.

2 In addition, when he gets out for a period of six
3 months as a condition of his supervised release he'll be on
4 curfew from 7:00 p.m. to 7:00 a.m. electronic monitoring which
5 he'll pay for if he can and he won't if he can't.

6 And then I'm also going to impose a search
7 condition, which means, Mr. Young, that if the Probation
8 Department has a reasonable suspicion that you're possessing
9 contraband or engaged in illegal activity, they can enter your
10 house, even if it is not your house, any place you're living,
11 any car you have access to, any place you have access to, to
12 do a search to see if you are violating any laws. And they'll
13 have to conduct that search in a reasonable time, place and
14 manner.

15 I'm not going to impose a fine because I know he
16 can't afford it. I will impose a 100-dollar special
17 assessment.

18 Anything further before I advise him of his
19 appellate rights which I assume were waived in the plea
20 agreement.

21 MR. SPEKTOR: They were waived, Your Honor. Just
22 one thing for the record, the matter of separation which was
23 bought up at the last sentencing. As Your Honor directed, we
24 did contact the BOP, we've asked them to expedite the
25 designation and they said they'll do that as long as we

1 forward the judgment, which we have already for the prior two
2 cases and we'll do that for this one as well.

3 THE COURT: Great. That also reminds me, any open
4 counts?

5 MR. SPEKTOR: There are no open counts at this time.

6 MR. DINNERSTEIN: Your Honor, there is one other
7 matter I would ask you to consider and that is also inpatient
8 drug program at the facility that he gets sent to. I don't
9 think you can order it but I think you can make an
10 recommendation.

11 THE COURT: I actually think I can order it. Do the
12 parties think I can't order it? I think what I can't do is
13 leave it to probation to determine whether it's inpatient or
14 out-patient, but I can order inpatient treatment and certainly
15 if he's asking for it I can order it.

16 MR. DINNERSTEIN: He is asking for it.

17 THE COURT: What does probation think about that?

18 THE PROBATION OFFICER: Your Honor, I believe you
19 can order it, yes, that's correct, while he's in custody.

20 THE COURT: I will modify the drug treatment that
21 I've conditioned as part of supervised release to require
22 inpatient drug treatment at a program to be selected by
23 probation and I will also recommend to the BOP that he have
24 the RDAP or whatever the equivalent maximum program is while
25 he's in custody, so hopefully that will do some good. All

1 right.

2 Mr. Young, by signing on to your plea agreement you
3 waived your right to appeal your conviction and the sentence I
4 just imposed, but if you think there was something
5 fundamentally wrong with either of those things or the events
6 leading up to them, you could attempt to appeal. To do that
7 you have to get what's known as a notice of appeal filed in 14
8 days. Mr. Dinnerstein will do that for you if you ask him.
9 You can ask the Clerk of the Court by certifying you can't
10 afford a lawyer and the clerk will do it for you, or you can
11 get from the MDC library the form of a notice of appeal and
12 file it here yourself. But please keep in mind, if you do
13 want to file that notice no matter how you delegate it it
14 remains your responsibility to see to it that it gets filed in
15 14 days or you will have irrevocably waived any right you
16 might have for appeal.

17 Anything further?

18 MR. SPEKTOR: Not from the government.

19 MR. DINNERSTEIN: Nothing, Your Honor, thank you.

20 THE COURT: We're adjourned.

21 (Matter concluded.)

22 * * * * *
23 I certify that the foregoing is a correct transcript from the
24 record of proceedings in the above-entitled matter.

24 s/ Georgette K. Betts January 25, 2018

25 GEORGETTE K. BETTS DATE